



SIDLEY AUSTIN LLP
ONE SOUTH DEARBORN
(312) 853-7000
(312) 853-7036 FAX

BEIJING	HOUSTON	SAN FRANCISCO
BOSTON	LONDON	SEATTLE
BRUSSELS	LOS ANGELES	SHANGHAI
CENTURY CITY	MUNICH	SINGAPORE
CHICAGO	NEW YORK	SYDNEY
DALLAS	ORANGE COUNTY	TOKYO
GENEVA	PALO ALTO	WASHINGTON, D.C.
HONG KONG	PORTLAND	WILMINGTON

FOUNDED 1866

FACSIMILE TRANSMISSION FORM

Date: June 11, 2018	No. of pages including cover sheet: 4
To: Magistrate Judge Pitman	Company: United States Magistrate Judge United States District Court Southern District of New York 500 Pearl Street New York, New York 10007
Telephone #:	Fax No #: 212-805-6111
SPECIAL INSTRUCTIONS: IF <u>NOT USA</u> PLEASE INDICATE COUNTRY & CITY CODE NUMBER	
From: Elizabeth W. Walker Sidley Austin LLP	

COMMENTS

* * * * *

IRS Circular 230 Disclosure: To comply with certain U.S. Treasury regulations, we inform you that, unless expressly stated otherwise, any U.S. federal tax advice contained in this communication, including attachments, was not intended or written to be used, and cannot be used, by any taxpayer for the purpose of avoiding any penalties that may be imposed on such taxpayer by the Internal Revenue Service. In addition, if any such tax advice is used or referred to by other parties in promoting, marketing or recommending any partnership or other entity, investment plan or arrangement, then (i) the advice should be construed as written in connection with the promotion or marketing by others of the transaction(s) or matter(s) addressed in this communication and (ii) the taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

* * * * *

Problems with this transmission should be reported to: (312) 853-7000

This fax is sent by a law firm and may contain information that is privileged or confidential. If you are not the intended recipient, please notify us immediately and dispose of this fax.

SIDLEY

SIDLEY AUSTIN LLP
787 SEVENTH AVENUE
NEW YORK, NY 10019
+1 212 839 5300
+1 212 839 5599 FAX

AMERICA • ASIA PACIFIC • EUROPE

June 10, 2018

BY FACSIMILE AND ECF

The Honorable Henry Pitman
United States Magistrate Judge
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: Wilmington Trust, N.A. v. 1141 Realty Owner LLC et al., No. 17-cv-7081 (LGS)

Dear Magistrate Judge Pitman:

We represent Plaintiff in the above-referenced matter. We write to request an emergency conference with Your Honor to discuss the imminent request of Robinson Brog Leinwand Greene Genovese & Gluck P.C. ("Robinson Brog"), counsel to Defendant 1141 Realty Owner LLC ("Borrower") and Jagdish Vaswani ("Vaswani," and together, with Borrower, the "Defendants"), to withdraw from these proceedings based on Defendants' alleged failure to honor their pecuniary obligations to Robinson Brog. As set forth below, while we are not unsympathetic to Robinson Brog's plight, it is essential that the briefing on Plaintiff's Renewed Motion for the Appointment of a Receiver (the "Renewed Receiver Motion") [Dkt. No. 172] continue without any delay to avoid any further deterioration of Plaintiff's collateral.

As Your Honor knows, on May 30, 2018, Plaintiff filed the Renewed Receiver Motion. Among the multitude of reasons justifying the appointment of a receiver, Plaintiff presented substantial and compelling evidence that Borrower (i) has failed to remit payment for essential services such as electricity and gas, (ii) does not have *any* management company or manager in place to operate the Hotel, (iii) has *no* online booking service for the Hotel, (iv) has *no* income from the sale of liquor since Borrower does not have a liquor license in full force and effect, (v) has *no* income from food or beverage service at the Hotel as Borrower has shuttered its bars and restaurants, and (vi) has *no* ability to pay the significant amount of past due accounts payables, which total over \$1 million. (Dkt. No. 173 at 21.)

Even today, Borrower still has not even *attempted* to remedy these very real threats to the existence of the Hotel. Instead, over the course of the past several weeks, Defendants have only sought to delay the completion of the briefing of the Renewed Receiver Motion and extend the

SIDLEY

The Honorable Henry Pitman
June 10, 2018
Page 2

deadline for the completion of discovery.¹ Most recently, on June 7, 2018, Defendants asked that the Court extend discovery by *another* three weeks (the “June 7 Request”) to accommodate the fact that Defendants, Defendant Robert K.Y. Chan, and several third parties had not yet finished producing documents. (Dkt. No. 179.)

Notably absent from Defendants’ extension request – not to mention from *any* of the discussions between the parties concerning Defendants’ various extension requests or the many meet and confer telephone conferences concerning the scheduling of numerous depositions – is *any* mention of Robinson Brog’s withdrawal from these proceedings. Indeed, Robinson Brog did not disclose its planned withdrawal until the evening of June 8, 2018, for all intents and purposes the eve of the deadline for Borrower’s opposition to the Renewed Receiver Motion and *after* Plaintiff already agreed to a further extension of the discovery deadline. In fact, Robinson Brog waited until approximately 5:30 p.m. EDT on June 8 to advise that it would be seeking (i) to withdraw as Defendants’ counsel and (ii) a 30 day extension of *all* deadlines, including the June 13 deadline for Borrower’s opposition to the Renewed Receiver Motion. Minutes after Robinson Brog’s surprise disclosure, Your Honor granted the June 7 Request.

Robinson Brog’s belated disclosure of its impending request to withdraw until after Defendants secured their desired extension and mere days before the deadline for Defendants’ opposition to the Renewed Receiver Motion, smacks of gamesmanship. Indeed, on numerous occasions, Robinson Brog advised Plaintiff that it needed the extension so that it could draft Borrower’s opposition to the Renewed Receiver Motion, to review documents, to prepare for depositions, and to go on vacation, but *never* even hinted that it might withdraw. While we recognize the potential propriety of permitting Robinson Brog’s withdrawal as counsel due to Defendants’ alleged failure to pay their fees, Plaintiff will be unduly prejudiced – and the state of the Hotel will only continue to further deteriorate – if Robinson Brog is permitted to withdraw before the Renewed Receiver Motion is fully briefed on June 20. Plaintiff respectfully requests that Your Honor convene a telephone conference with all parties on an emergency basis, and require Vaswani, who is also Borrower’s corporate representative, to personally attend.

¹ First, on May 24, 2018, Defendants asked the Court not to hear Plaintiff’s then-impending renewed motion for the appointment of a receiver on an expedited basis due to vacation plans. (Dkt. No. 166.) Then on May 29, 2018, Defendants professed to need a full 14 days to respond to the then-impending receiver motion based on the “seriousness of the motion and the numerous depositions to be scheduled in June.” (See Dkt. 171.) Then On June 1, 2018, after the filing of the Renewed Receiver Motion, Defendants again sought to delay the briefing based on Your Honor’s June 1, 2018 Order, and also requested a 30-day extension of the discovery deadline “to provide more time for the review of documents to prepare for depositions.”

SIDLEY

The Honorable Henry Pitman
June 10, 2018
Page 3

Thank you for your attention to this matter.

Respectfully submitted,

/s/ Elizabeth W. Walker

Elizabeth W. Walker

Cc: Counsel of Record